

TAB L

VOLUME: I
PAGES: 176
EXHIBITS: See Index

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

	X	
CYCLE-CRAFT CO., INC.,	X	
d/b/a BOSTON	X	
HARLEY-DAVIDSON/BUELL,	X	
Plaintiff	X	
	X	CASE NO.
vs.	X	04 11402 NMG
	X	
HARLEY-DAVIDSON MOTOR	X	
COMPANY, INC., and BUELL	X	
DISTRIBUTION COMPANY, LLC,	X	
Defendants	X	

VIDEOTAPED DEPOSITION of
KENNETH MCPHEE, taken pursuant to the applicable provisions of the Federal Rules of Civil Procedure, before Jill Kourafas, Certified Shorthand Reporter and Notary Public in and for the Commonwealth of Massachusetts held at the Law Offices of Bingham McCutchen, 150 Federal Street, Boston, Massachusetts, on May 2, 2005, commencing at 9:17 a.m.

REPORTERS, INC.
GENERAL & TECHNICAL COURT REPORTING
23 MERRYMOUNT ROAD, QUINCY, MA 02169
617.786.7783/FACSIMILE 617.786.7723

1 the declaration?

2 A. No.

3 Q. Since signing the declaration, have you done
4 anything in connection with any
5 investigation of these 45 transactions?

6 A. Nothing other than review with counsel.

7 Q. And was that in preparation for your
8 deposition today?

9 A. Yes.

10 Q. Could you take a look at Paragraph 14 on
11 Page 4 of your declaration?

12 A. Yes.

13 Q. This paragraph deals with three units
14 purchased by Cycle-Craft; do you see that?

15 A. Yes.

16 Q. I take it you were not personally involved
17 with the acquisition of those units or the
18 handling at the dealership?

19 A. That's correct.

20 Q. Do you know whether they were being used or
21 ridden at the time of your declaration in
22 June of '04?

23 A. Yes, they were.

24 Q. They were uncrated and being used?

1 A. Yes.

2 Q. Do you know for how long they'd been used?

3 A. One of them I know was used throughout the
4 year.

5 Q. Does Cycle-Craft still own these motorcycles
6 today?

7 A. Yes, we do.

8 Q. They haven't been transferred to anybody?

9 A. No, not to my knowledge.

10 Q. Do you know whether they're registered with
11 the DMV?

12 A. I believe -- I think one is still.

13 Q. What about the other two?

14 A. The other two, I believe, are in crates.

15 Q. And these three motorcycles were reported as
16 having been sold at retail, SWR submissions
17 by the dealership to Harley-Davidson; is
18 that correct?

19 MR. REHNQUIST: Objection;
20 foundation.

21 A. To my knowledge, yes.

22 Q. You say in your affidavit, Paragraph 14, the
23 second-to-last sentence, "They were
24 legitimate sales to Cycle-Craft"; do you see

1 that?

2 A. Yes.

3 Q. So Cycle-Craft was the retail buyer; is that
4 right?

5 MR. REHNQUIST: Object to the form.

6 A. To my knowledge, Cycle-Craft purchased these
7 motorcycles to keep at the dealership from
8 Harley-Davidson.

9 Q. And did not resell them to anyone?

10 A. That's correct.

11 Q. So there was no retail sales of these
12 motorcycles; isn't that right?

13 MR. REHNQUIST: Objection. Object
14 to form.

15 Q. You can answer.

16 A. Well, they were bought and paid for by
17 Cycle-Craft. They are not resold to
18 anybody.

19 Q. Paragraph 15 refers to Mr. Fred Giordano; do
20 you see that?

21 A. Yes.

22 Q. In the second sentence you say,
23 "Mr. Giordano is related to a Joseph
24 Giordano who is a Cycle-Craft employee"; do